

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6317

BILL NUMBER: HB 1033

NOTE PREPARED: Feb 29, 2012

BILL AMENDED: Feb 28, 2012

SUBJECT: Conversion of Class D Felony to Class A Misdemeanor.

FIRST AUTHOR: Rep. McMillin

FIRST SPONSOR: Sen. Steele

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Criminal History Provider* – It defines "criminal history provider" and requires a criminal history provider to update its records annually to remove inaccurate information and information that has been expunged, restricted, or limited. It provides that a criminal history provider may only disclose certain information relating to a conviction, and permits the Attorney General and a person harmed by a criminal history provider to bring an action against the criminal history provider if the criminal history provider fails to update its records or discloses nonconviction information.
- B. *Employer Questions about Criminal Background* – It makes it a Class B infraction for an employer to ask whether a person's criminal records have been sealed or restricted.
- C. *Conversion of One or More Class D Felonies to Class A Misdemeanors* – It allows a court to convert one or more Class D felonies to Class A misdemeanors if: (1) the person is not a sex or violent offender; (2) the offense was a nonviolent offense; (3) the person has not been convicted of perjury or official misconduct; (4) at least three years have passed since the person completed the sentence; (5) the person has not been convicted of a new felony; and (6) no criminal charges are pending against the person. It requires a court to detail the reasons for denying a petition to reduce a Class D felony to a Class A misdemeanor if the denial is based on the court's discretion.
- D. *Conversion of Felony to Misdemeanor* – It specifies that a conviction for a Class A misdemeanor that was originally entered as a Class D felony and converted to a Class A misdemeanor under an express

sentencing provision is treated as a Class A misdemeanor.

- E. *Reconversion to a Felony from Misdemeanor* – It provides that if a person whose Class D felony conviction has been converted to a Class A misdemeanor conviction is convicted of a felony within five years after the conversion, a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction.
- F. *Disclosure of Records Relating to an Infraction* – It requires a court to restrict disclosure of records relating to an infraction if: (1) the person is not prosecuted; (2) the infraction is dismissed; (3) the person is found not to have committed the infraction; or (4) the judgment is reversed on appeal; and establishes a procedure to restrict infractions if the court does not act on its own motion. It requires records relating to an infraction be sealed five years after the judgment for the infraction is satisfied.

Effective Date: July 1, 2012.

Explanation of State Expenditures: The conversion from a Class D felony to a Class A misdemeanor will change the offender's record. However, the offender will have already paid any fines and served any prison sentence required. Consequently, there would be no fiscal impact from this provision.

Converting a Class A Misdemeanor Back to Class D Felony – It is possible that some persons who are convicted of future felonies may have their time in prison increased because of habitual enhancements under IC 35-50-2-8.

Explanation of State Revenues: *Penalty Provision* – *There are two penalty provisions in this bill.*

(1) If a criminal history provider does not update its records to remove any information that is either inaccurate, expunged, or restricted in access, the provider can be assessed a civil penalty of \$1,000 for a first violation and \$5,000 for any subsequent violation. Any revenue ordered by the courts for a civil penalty would be deposited in the state General Fund.

(2) An employer commits a Class B infraction if an employer asks whether an employee, contract employee, or applicant has a criminal record that has either been sealed or restricted. The maximum judgment for a Class B infraction is \$1,000, which would be deposited in the state General Fund. However, any additional revenue is likely to be small.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Penalty Provision* – If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. However, any additional revenue is likely to be small.

State Agencies Affected: Department of Correction; Office of the Attorney General; Indiana State Police.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

Fiscal Analyst: Mark Goodpaster, 317.232.9852.